

COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 384 of 2003

Oriental Insurance Co. Ltd. ... **Appellant.**

Versus

Smt. Sumitra Devi
and others. ... **Respondents.**

**Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.**

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 (*in short the Act*) against the judgment and Award, dated 21-8-2003, passed in M.A.C.T. Petition No. 7 of 2001, Smt. Sumitra Devi and 2 others Vs. Rajendra Prasad and another, by the Motor Accident Claims Tribunal/District Judge Tehrigarhwal (*hereinafter referred to as the Tribunal*), whereby the learned Tribunal has awarded a sum of Rs. 5,00,000/- along with interest @ 6% per annum in favour of the claimants as against O.P. No.2-appellant. Aggrieved, the Insurance Company-O.P.No.2 has come up in appeal with a prayer to set aside the impugned judgment and award mainly on the ground that the vehicle in question was a Mini Truck and not a Jeep and the same was being plied in breach of policy condition and quantum of compensation and it has been contended the findings of the learned Tribunal are not based on evidence on record.

We have heard learned counsel for the appellant, Mr. T.A.Khan as well as learned counsel for the claimant-respondent no. 1 to 3, Mr. Vinod Sharma, and have

carefully gone through the entire material on record including the impugned judgment and award.

Brief facts are that Jayendra Singh (the deceased) has died as a result of injuries sustained by him in a motor accident on 16.7.2000 at 9 a.m. at Bansikhala on Suakholi-Thatyur motor road involving vehicle no. U.P. 07H/1157 due to rash and negligent driving by its driver. Initially injured Jayendra Singh, his wife and two minor children filed the claim petition, but during pendency of case, injured succumbed to his injuries, therefore, claim petition has been pressed by his dependents. O.P.No. 1 filed his written statement and admitted the accident, but has asserted that the accident was result of technical failure and bad weather. The vehicle was duly insured, therefore, the liability rests on the Insurance Company to pay compensation, if any. Insurance Company, O.P. No.2, has also contested the petition by filing its written statement and has denied all the allegations and has further pleaded that the owner of the offending vehicle was possessing all necessary valid documents, viz. permit, registration certificate and the driver of the vehicle was not holding a valid driving licence. The vehicle was insured as Mini Truck, therefore, the liability to pay compensation is on the owner of the vehicle.

Learned Tribunal framed as many as five Issues in the case. Issue No. 1 related to rash and negligent driving of the driver of the vehicle involved. Issue No. 2 related to insurance of the vehicle on the date of accident. Issue No.3 related to holding of valid driving licence by the driver of the vehicle. Issue No.4 and 5 related to compensation and relief. The learned Tribunal after considering the evidence on record, has held on Issue No. 1 that the motor accident has occurred due to rash and negligent driving by the driver of

the offending vehicle. On Issue No.2, the Tribunal has come to the conclusion that the vehicle in question was duly insured with the appellant-insurance company as Mahindra Jeep, Mini-Truck UP 07 H/1157. On Issue No. 3, the Tribunal has held that Insurance Company has failed to prove that the driver was not holding a valid driving licence. Accordingly, the Tribunal has decided this Issue against the appellant. On Issue No. 4, it has been found that the income of the deceased was Rs. 4,000/- per month and he was aged about 22 years. After deducting $\frac{1}{3}^{\text{rd}}$ of monthly income towards personal expenses of the deceased, the annual loss of dependency has been determined at Rs. 32,000/-. For determination of just compensation, the Tribunal has applied multiplier of 15 in the present case, thereby working out total loss of dependency at Rs. 4,80,000/-. In addition, the Tribunal has awarded lump-sum amount of Rs. 20,000/- under different heads and ultimately, has decreed the claim petition for a sum of Rs. 5,00,000/- along with interest @ 6% per annum, as mentioned earlier.

So far as the contention of the appellant that in the present case, Mini Truck was involved in the accident, which was not meant for carrying passengers on hire or reward, therefore, there is breach of policy conditions and the Insurance Company was not liable for payment of compensation. We have perused the entire written statement, filed by the appellant before the Tribunal. Not a single word has been said by the appellant on this point before the Tribunal. The grounds on which the claim petition has been challenged relate to breach of policy condition on account of validity of driving licence, possession of valid documents like permit, registration, fitness, etc., want of injury report/post mortem report and plea of collusion between claimants and insured/owner of the vehicle. Plea of defence

under Section 170 of the Act has been mentioned, but we find that no specific permission has been granted by the Tribunal to the appellant. Moreover, the Insurance Company has also moved an amendment application before the Tribunal for incorporating the word Mahindra M.T. No. U.P. 07 H-1157; but even then it has not taken any steps to file additional written statement before the Tribunal. There had been ample opportunity for the appellant to take the plea before the Tribunal, which has now been taken in the memo of appeal. This circumstance itself goes to the root of the case, that a new defence has been brought up before this Court. Even otherwise, the learned counsel for the appellant could not point out to us as to how there has been breach of policy conditions in the present case. At this stage, in our opinion, the appellant cannot take advantage of his own weakness. The Tribunal has elaborately discussed the entire evidence on record and we do not find any reason to interfere with the findings arrived at by the Tribunal.

As regards the contention of the appellant challenging the quantum of compensation, it is most significant to mention here that the grounds of challenge available to the insurer-appellant have been enumerated in sub-Section (2) of Section 149 of the Act and no other ground is available to the Insurance Company. No permission under Section 170 of the Act has been granted by the Tribunal to the appellant to contest the case on the grounds available to the insured or the person against whom claim has been preferred. Section 170 of the Motor Vehicles Act deals with impleadment of insurer in certain cases. On a careful perusal of the said provisions of law, we are not inclined to accept the contentions raised on behalf of the insurer-appellant, because under the Act, the insurer has no right to challenge the judgment and award passed by the learned Tribunal except on the grounds as enumerated under sub-Section (2) of Section 149 of the Motor Vehicles Act, 1988.

The law provides that appeal by the insurer can be filed on limited grounds and the grounds of challenge cannot be enlarged. We are fortified in our view by the Apex Court judgment in the Case of ***“National Insurance Company Ltd. Chandigarh Vs. Nicolletta Rohtagi and others” [(2002) 7, Supreme Court Cases, 456]***. In that case, it has been observed by the Apex Court that ***“even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle”***. Thus, in view of the law laid down by the Apex Court reported in (2002)7, S.C.C. 456 (*supra*), which is fully applicable in the present appeal, none of the contentions raised on behalf of the appellant is tenable and has to be ignored outright.

Ultimately, we are of the view that the present appeal is devoid of merit and must fail.

The appeal is dismissed. The impugned judgment and award is upheld. No order as to costs.

The amount in deposit with this Court be remitted to the Motor Accident Claims Tribunal concerned.

26-08-2004
RCP

(B.S. Verma, J.)

(P.C. Verma. J.)